

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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February 17, 2015

File Ref: SCH #2015012048

Jacob McQuirk  
Supervising Engineer, Bay-Delta Office  
California Department of Water Resources  
PO Box 942836  
Sacramento, CA 94236

**Subject: Mitigated Negative Declaration (MND) for the Emergency Drought  
Barriers Project, Yolo, Sacramento, and Contra Costa Counties**

Dear Mr. McQuirk:

The California State Lands Commission (CSLC) staff has reviewed the subject MND for the Emergency Drought Barriers Project (Project), which is being prepared by the California Department of Water Resources (DWR). DWR, as a public agency proposing to carry out a project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC is a trustee agency for projects that could directly or indirectly affect sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

**CSLC Jurisdiction and Public Trust Lands**

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership

extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After reviewing the information contained in the MND for the Project, CSLC staff has determined that the Project would take place waterward of the Ordinary High Water (OHW) mark in the historic, natural riverbed of Sutter Slough, Steamboat Slough, and West False River. At this location, any submerged land waterward of the OHW mark is State-owned sovereign land under the jurisdiction of the CSLC.

On September 26, 1979, the CSLC approved a Memorandum of Understanding (MOU), effective October 19, 1979, between DWR and the CSLC providing for the use by DWR of State-owned sovereign lands under the jurisdiction of the CSLC for the Central Valley Project (CVP) and the State Water Resources Development System, currently referred to as the State Water Project (SWP).

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a State of Emergency (Proclamation) for the State of California due to drought conditions. The Project was initially proposed in response to this Proclamation. Among others, an intended benefit is to the SWP and CVP and their ability to maintain access to water supplies for human health and safety.

Based on the information provided, CSLC staff has concluded that the Project qualifies as an activity covered under the MOU (see letter of qualification dated April 9, 2014, attached). Therefore, a lease from the CSLC is not required. Please contact Wendy Hall, Public Land Management Specialist (see contact information below) for further information about the CSLC process.

Please also be advised that the waterways involved in the Project are subject to a public navigational easement. This easement provides that the public has the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The activities completed under the Project must not restrict or impede the easement right of the public.

This conclusion is without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to our attention. This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

### **Project Description**

DWR proposes to construct emergency barriers across Sutter Slough, Steamboat Slough, and West False River to reduce the intrusion of saltwater into the Delta during drought conditions. Reducing saltwater intrusions would:

- Benefit communities and farmers in and adjacent to the Delta that rely exclusively on Delta water for municipal water and irrigation;
- Benefit upstream resources and communities, by reducing demand on reservoir releases to maintain salinity objectives in the Delta; and
- Benefit the CVP and SWP operators as they attempt to maintain access to water supplies.

From the Project Description, CSLC staff understands that the Project would include the following components:

- Weir Structures. Riprap barrier weir structures would be installed at three sites, Sutter Slough, Steamboat Slough, and West False River, up to three times during the 10-year period between 2015 and 2025. All of the structures would have a trapezoid shape with a wide base tapering up to a 12-foot-wide top.
- Sheet Pile. The West False River site would have transitions to the levees with 75-foot-long sheet pile walls supported by king piles.
- Fish Passage. The Sutter and Steamboat Slough sites would be designed to allow fish passage by using a combination of an overflow weir and the installation of four 48-inch culverts with slide gates. The West False River barrier does not include these features, but fish movement can occur through the adjacent San Joaquin River during West False River closures.
- Vessel Traffic Elements. The Steamboat Slough site would include boat ramps on either side of the barrier. These boat ramps, along with mobile equipment and an operator provided by the State, would be used to move vessels up to 24 feet and 10,000 pounds around the barrier. Boats headed for Sutter Slough would be directed to Steamboat Slough by signage. Appropriate navigation signage would be installed at each of the sites and would inform boaters of restricted access.
- Monitoring Instruments. Solar powered monitoring instruments would be placed upstream and downstream at each site and would monitor parameters like dissolved oxygen, turbidity, salinity, and flow velocity.

## Environmental Review

CSLC staff requests that DWR consider the following comments on the Project's MND.

### Biological Resources

1. Invasive Species: Although the MND considers the impacts of various aspects of the Project on fish species, such as installing riprap and changes to water quality during Project operation, the MND does not consider the Project's potential to introduce or spread aquatic invasive species to the area. The use of barges and in-water construction equipment at the three sites could facilitate the spread or introduction of invasive species. The MND should consider a range of options to slow the introduction of invasive species into sensitive habitats, including hiring construction vessels from nearby, or requiring hull cleaning from contractors prior to Project construction.

In addition, please consider whether changes to flow velocity in the Project area due to barrier operation would create a favorable environment for aquatic invasive weeds. Delta waterways experience invasions by water hyacinth and Brazilian elodea, which can clog waterways and impede navigation. The California State Parks Division of Boating and Waterways (DBW) has an aquatic weed control program to control water hyacinth and Brazilian elodea in the Delta. CSLC staff recommends coordination with DBW to anticipate any problems with aquatic invasive weeds and develop mitigation measures, or a control plan, if necessary.

### Water Quality

2. Mercury/Methylmercury: The MND study area includes the Sutter Slough, Steamboat Slough and West False River. Sediment disturbance contributes to mercury transport in the Delta; therefore CSLC staff is supportive of the avoidance and minimization measure to ensure that turbidity levels and sediment disturbance during construction do not exceed basin plan standards. In addition, please consult with the Central Valley Regional Water Quality Control Board (CVRWQCB) and State Water Resources Control Board to ensure that the turbidity measure will also effectively reduce potential release of mercury into waterways, and onto State lands underlying those waterways, to a less than significant level.

On April 22, 2010, the CVRWQCB identified the CSLC as both a State agency that manages open water areas in the Sacramento-San Joaquin Delta Estuary and a nonpoint source discharger of methylmercury (Resolution No. R5-2010-0043), because subsurface lands under the CSLC's jurisdiction are impacted by mercury from legacy mining activities dating back to California's Gold Rush. Pursuant to a CVRWQCB Total Maximum Daily Load (TMDL), the CVRWQCB is requiring the CSLC to fund studies to identify potential methylmercury control methods in the Delta and to participate in an Exposure Reduction Program. The

goal of the studies is to evaluate existing control methods and evaluate options to reduce methylmercury in open waters under jurisdiction of the CSLC. Any action taken that may result in mercury or methylmercury suspension within the Sacramento-San Joaquin Delta Estuary may affect the CSLC's efforts to comply with the CVRWQCB TMDL.

Thank you for the opportunity to comment on the MND for the Project. As a responsible and trustee agency, we request that you consider our comments prior to adoption of the MND.

Please send copies of future Project-related documents, including electronic copies of the Final MND, Mitigation Monitoring and Reporting Program (MMRP), Notice of Determination (NOD), when they become available, and refer questions concerning environmental review to Holly Wyer, Environmental Scientist, at (916) 574-2399 or via e-mail at [Holly.Wyer@slc.ca.gov](mailto:Holly.Wyer@slc.ca.gov). For questions concerning CSLC leasing jurisdiction, please contact Wendy Hall, Public Land Management Specialist, at (916) 574-0994, or via email at [Wendy.Hall@slc.ca.gov](mailto:Wendy.Hall@slc.ca.gov).

Sincerely,



Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

Enclosure

cc: Office of Planning and Research  
H. Wyer, CSLC  
W. Hall, CSLC  
E. Milstein, CSLC



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April 9, 2014

File Ref: PRC 5893.9

Paul Marshall, Chief  
Bay-Delta Office  
California Department of Water Resources  
1416 Ninth Street  
Sacramento, California 94236-0001

Subject: Notice of Proposed Use of State Lands Pursuant to the 1979 Memorandum of Understanding (MOU) between the State Lands Commission (CSLC) and the Department of Water Resources (DWR), 2014 Emergency Delta Drought Barriers Project, Sacramento, Yolo, and Contra Costa Counties

Dear Mr. Marshall:

This letter is in response to the Notice of Proposed Use of State Lands (Notice) submitted by the DWR to the CSLC on April 3, 2014, requesting the proposed 2014 Emergency Delta Drought Barriers Project (Project) in Sutter Slough, Yolo and Sacramento Counties, in Steamboat Slough, Sacramento County, and in West False River, Contra Costa County be qualified under the MOU between DWR and CSLC.

On September 26, 1979, the CSLC approved an MOU, effective October 19, 1979, between DWR and the CSLC providing for the utilization by DWR of State-owned sovereign lands under the jurisdiction of the CSLC for the Central Valley Project and the State Water Resources Development System.

On January 17, 2014, the Governor of the State of California, Edmund G. Brown Jr., issued a Proclamation of a State of Emergency (Proclamation) for the State of California due to current drought conditions. As ordered in the Proclamation:

"16. The Department of Water Resources will take necessary actions to protect water quality and water supply in the Delta, including installation of temporary barriers or temporary water supply connections as needed, and will coordinate with the Department of Fish and Wildlife to minimize impacts to affected aquatic species."

DWR is proposing the Project in response to this Proclamation. As described in the DWR Statement of Purpose and Need, the purpose of the Project is to prevent the intrusion of saltwater into the Delta, which would render the water undrinkable by 25 million Californians and unusable by the farms that are reliant upon this source, as well as to protect habitat for sensitive aquatic species in the Delta. The barriers are intended to specifically benefit:

- Communities and farmers in and adjacent to the Delta that rely exclusively on this source for drinkable water.
- Upstream resources and communities, because once installed, the barriers would reduce demand on reservoir releases to maintain salinity levels in the Delta, leaving more water upstream for both fishery and community needs.
- The State Water Project (SWP) and Central Valley Project (CVP), as they attempt to maintain access to water supplies for human health and safety.

As described in the Notice, DWR proposes to install rock (rip-rap) barrier dike structures at all three sites. All structures would be trapezoid-shaped rock barriers with a wide base tapering up to a 12-foot-wide top width set perpendicular to the channel alignment, and would extend two feet above the spring high tide. Rock fill would be placed along the base of the levees for support at the Sutter Slough and Steamboat Slough sites. The West False River site would have transitions to the levees with 75-foot long sheet pile walls supported by king piles and buttressed with rock. Site plans for each location are included in the Structural Components section of the Biological Assessment and additional design details are included in Appendix A of the document.

The rock barriers would be installed at each of the sites in Spring 2014 (beginning around April 1) and would be removed in November 2014, prior to the rainy season and the period that fall-run Chinook salmon would pass through the Delta. All rock, gravel, and structures would be removed from the EDB sites, with the exception of the sheet pile abutments at the West False River site. The materials would be transported from the area, primarily on barges. Materials would be stored at a nearby DWR storage facility, likely located in Hood, Rio Vista, or the Port of Stockton. If drought conditions persisted, the barriers could be reinstalled and removed in subsequent years during the same timeframes.

Disturbed areas would be restored after initial construction and after EDB structures were removed to meet local land use and resource agency requirements as soon as they are no longer needed. After restoration was completed, the all-waterway channel beds would be restored to grade with clean sand.

The proposed Project lies in areas that are subject to the public navigation easement. This easement provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters



that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The proposed borings must not restrict or impede the easement right of the public.

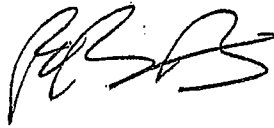
A Coast Guard permit is not required for this Project; however, DWR will comply with the "Local Notice to Mariners" (Notice) which is a standard practice required by the Coast Guard. The Notice notifies marinas and all interested parties of the proposed Project. DWR's contractor will post a "no wake" sign at the Project site, and the vessel to be used will have a licensed Captain on board 24 hours a day/seven days a week.

Based on the information provided, staff concluded that the Project qualifies as a project under the MOU. Therefore, a lease from the Commission is not required.

This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

Thank you for providing CLSC the opportunity to comment on this Project as a responsible agency. If you have any further questions, please contact Wendy Hall, Public Land Management Specialist, at (916) 574-0994 or [wendy.hall@slc.ca.gov](mailto:wendy.hall@slc.ca.gov).

Sincerely,



Brian Bugsch, Chief  
Land Management Division

cc: Geoffrey Shumway  
Associate Right-of-Way Agent  
Real Estate Branch  
Division of Engineering  
California Department of Water Resources  
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Marshall  
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cc: Wendy Hall  
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